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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 10, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 05HD-243

HAWAII

**Grant of Perpetual, Non-Exclusive Easement to Steven C. Anderson for
Access and Utility Purposes, Keahialaka, Puna, Hawaii, Tax Map Key: 3rd/ 1-
3-07:23 and 1-3-08:12**

APPLICANT:

Steven C. Anderson, Tenant in Severalty, whose mailing address is 4295 Mt. Henry
Avenue, San Diego, CA 92117.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Malama-Ki situated at Keahialaka, Puna, Hawaii,
identified by Tax Map Key: 3rd/ 1-3-07: 23 and 1-3-08:12, as shown on the attached
map labeled Exhibit A.

TMK/ ZONING/ ENCUMBRANCE/ AREA:

TAX MAP KEY	ZONE		ENCUMBRANCE	AREA
	LUC	CZO		
3 rd / 1-3-07: 23	Conservation	Conservation	Unencumbered	.327
3 rd / 1-3-08: 12	Agriculture	Agriculture	Unencumbered	2.437

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

For access and utility:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

Gratis

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Not applicable. The Applicant as an individual/landowner and is not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

The subject State property, identified as Parcel 12 of Tax Map Key: 3rd/ 1-3-08, comprise the entirety of an existing graveled roadway, which was formerly a railroad right-of-way under the Puna Sugar Company, Limited. By Deed dated November 11, 1982, the Puna Sugar Company Limited, conveyed all of its rights, title and interest in and to that segment of the subject abandoned railroad right-of-way to the State of Hawaii, under Land Office Deed No. S-27,508. The subject abandoned railroad right-of-way currently serves as an access road to various private properties in the area, which includes a parcel encumbered under Governor's Executive Order No. 1908 to the University of Hawaii for Agriculture Experimental Station. Those private properties currently utilizing the existing roadway, have not obtained an easement from the State, authorizing its use of the subject abandoned railroad right-of-way as their respective private legal accesses. Staff has recently made contact with the private landowners and notified them that an easement is required from the State, to enable its continued use over the subject abandoned railroad right-of-way/ roadway.

On March 19, 2002, Mr. Steven C. Anderson submitted a letter to the Hawaii District Land Office, to inquire on the jurisdiction and possible acquisition of an easement from the State, over an abandoned railroad right-of-way. Documents provided by Mr. Anderson and researched by Staff Abstractor verified that the subject railroad right-of-way identified as Parcel 12, is under State jurisdiction.

By letter dated August 1, 2005, Mr. Tom C. Leuteneker, Attorney with Carlsmith Ball LLP, on behalf of Mr. Steven C. Anderson, submitted a formal request with application for a perpetual, non-exclusive easement over State lands at Malama Ki, Keahialaka, Puna, Hawaii, Tax Map Key: 3rd/ 1-3-07: 23 and 1-3-08:12. Mr. Anderson is attempting to establish a legal access for his landlocked private properties, which is identified as Tax Map Keys: 3rd/ 1-3-07: 12, 13 & 24.

Mr. Steven Anderson has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions

Various governmental agencies were solicited for comments. To date, all respondents indicated that they had no objections to the granting of the easement.

AGENCY	COMMENTS
County of Hawaii:	
Planning	No objections, see comments
Public Works	No objections, see comments
Water Supply	No response

State of Hawaii:	
DHHL	No comments
DLNR-Aquatics Resource	No objections
DLNR- DOCARE	No response
DLNR- DOFAW	No objections
DLNR- Historic Preservation	No response
DLNR- Na Ala Hele	No response
DLNR- OCCL	No objections
DLNR-State Parks	No objections
DOT-Highways Division	No comments
Office of Hawaiian Affairs	No objections, See comments

The County of Hawaii, Planning Department, had no objections to the issuance of a Grant of Easement, but requested that applicants within 30-days of issuance of the easement, submit to the Planning Department a request for a street name for the subject roadway, pursuant to County Ordinance 04-82. Staff will look into procedures concerning this matter.

The County Public Works had no objections, but recommends that a quitclaim deed to the State be filed to avoid confusion with respect to jurisdictional responsibility and ownership established by Chapter 264-1, Hawaii Revised Statutes.

It is our understanding that railroad right-of-ways were not included within the definitions of government roads under 264, HRS, therefore, the subject railroad right-of-way is and continues to be under the jurisdiction of the State. As a result, staff does not feel that a quitclaim deed from the County to the State is necessary.

The Office of Hawaiian Affairs notes that the easement area is over ceded lands, which are held in public trust and should not be sold in perpetuity. That the easement should be for term, at fair market value or should be traded in a land exchange for lands of equal value.

Staff feels that issuing an easement, even if in perpetuity, is most desirous to resolve this land locked situation, particularly because it would be for non-exclusive use and assessed at fair market value. A land exchange as proposed by OHA, is not the most realistic alternative due to the time, cost and efforts required to complete such a transaction.


RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition

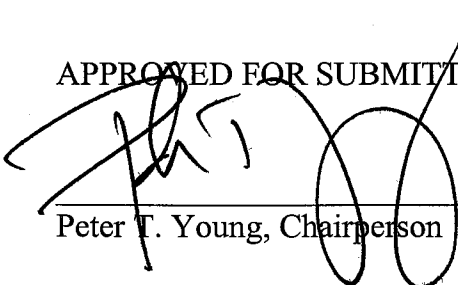
as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

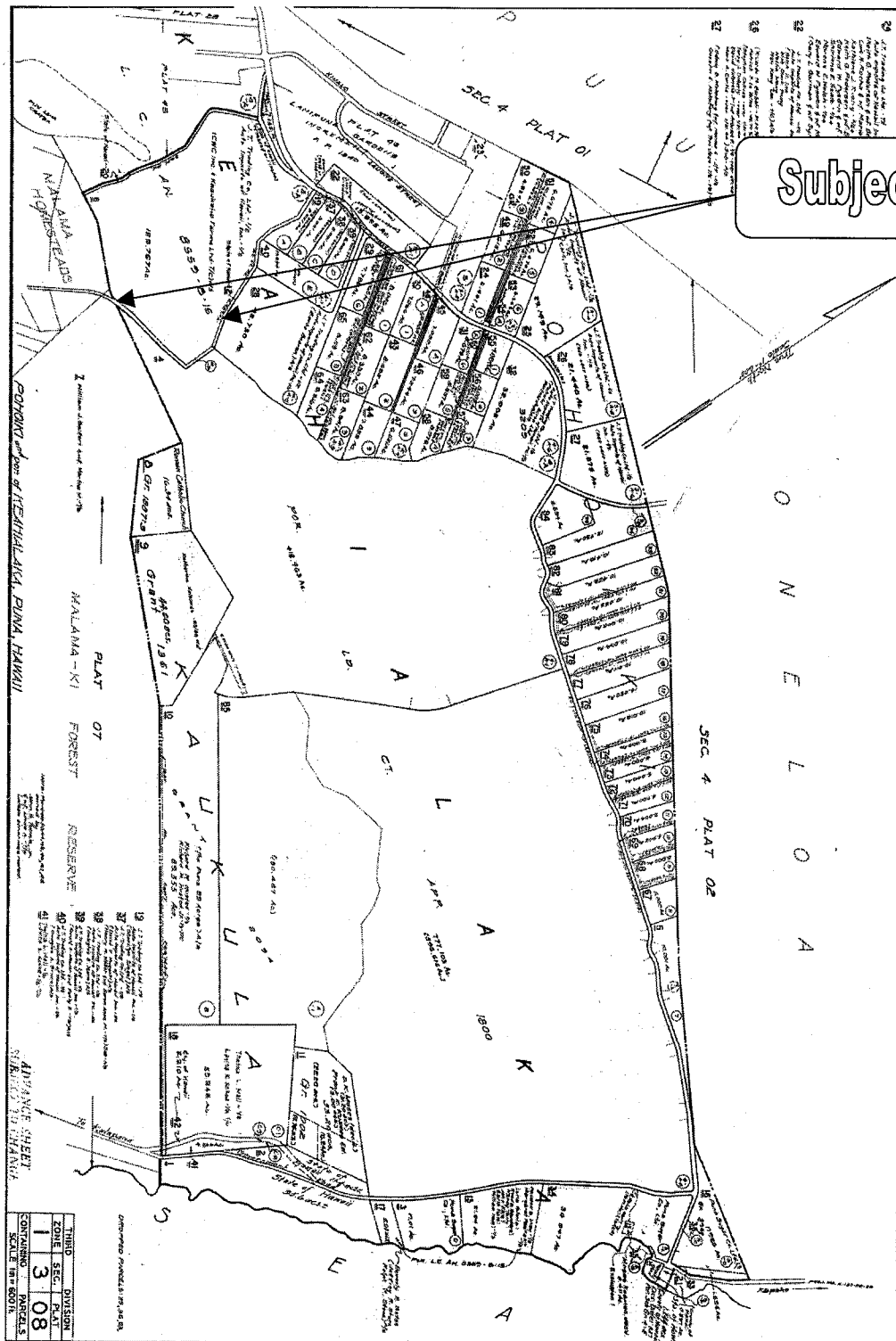
2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to Steven C. Anderson, covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3rd/ 1-3-07: 12, 13 & 24, provided that when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Applicant agrees to grant a perpetual easement, for a similar purpose over and across its own property to the State of Hawaii, at gratis, for the benefit of the State owned lands identified as TMK: 3rd/ 1-3-07: 6, 7 & 25;
 - D. Review and approval by the Department of the Attorney General; and
 - E. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

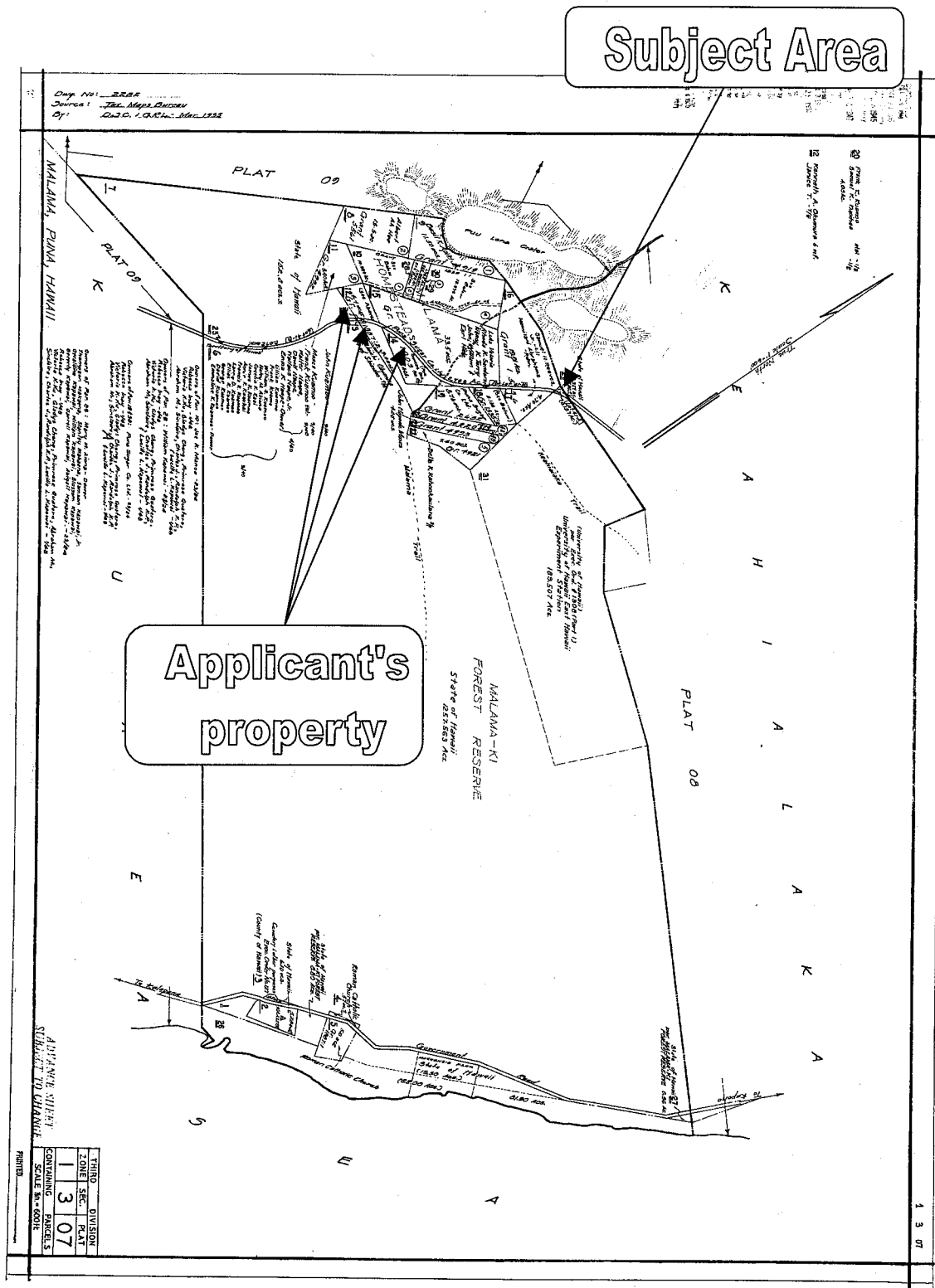
APPROVED FOR SUBMITTAL:


Peter T. Young, Chairperson



Subject Easement

EXHIBIT A



Enlargement of above map

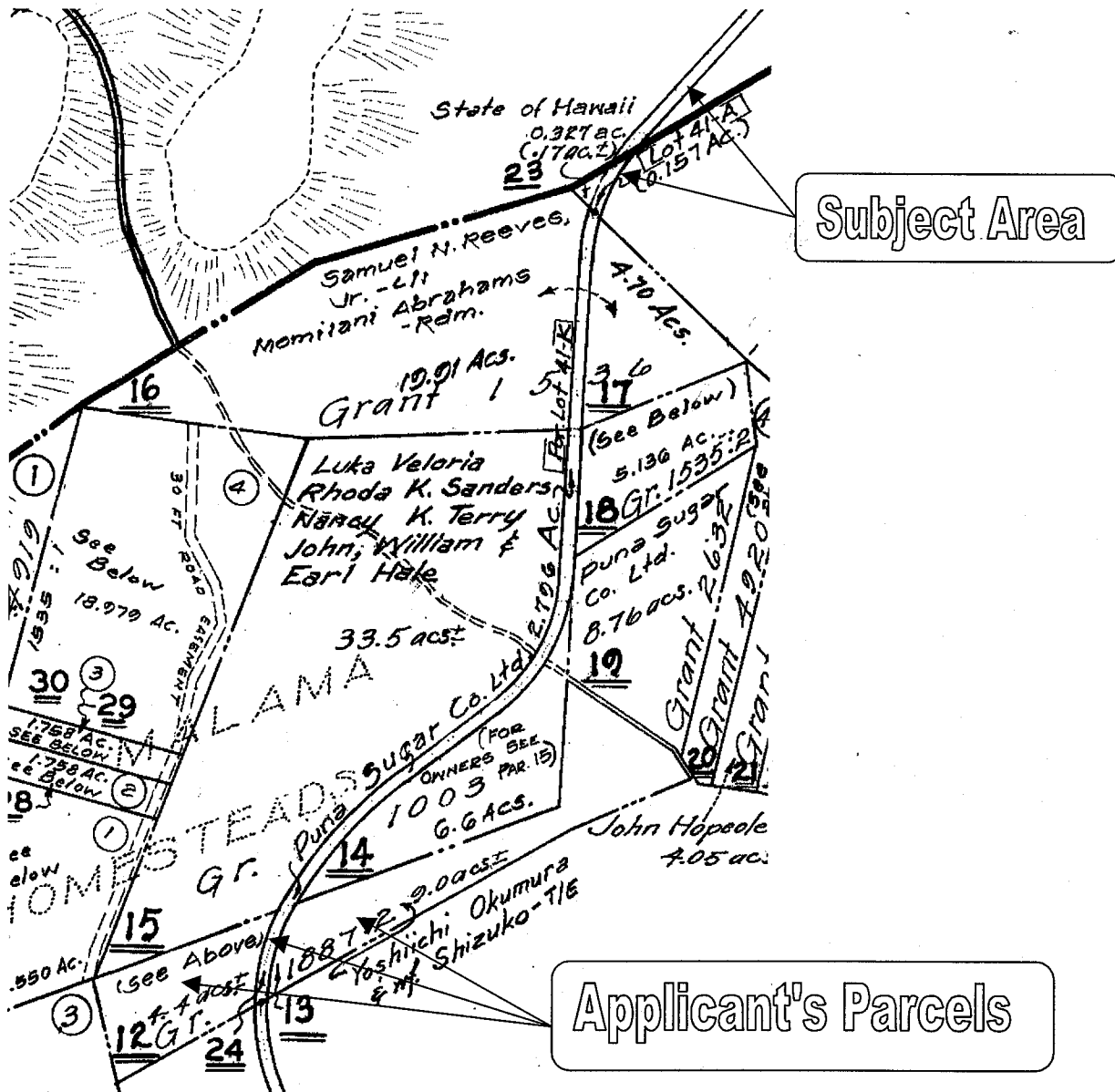


EXHIBIT A

LINDA LINGIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
LAND DIVISION

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 29, 2005

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOLAWE ISLAND RESERVATION COMMISSION
LAND
STATE PARKS

Ref. No.: PSF: 05KD-193
Author: LD-TOI

MEMORANDUM

TO:

State Agencies:

- ☒ DOH
☐ DHHL
☐ DLNR-Aquatic Resources
☐ DLNR-Forestry & Wildlife
☒ DLNR-Historic Preservation
☐ DLNR-State Parks
☐ DLNR-Conservation District Planning
☐ DLNR-Water Resource Management
☐ DOT

Federal Agencies:

- ☒ Corps of Engineers
☐ NRCS

County Agencies:

- ☒ Planning
☐ Parks & Recreation
☒ Public Works
☒ Water Department

Other Agencies:

Office of Hawaiian Affairs

FROM: Thomas H. Oi, Kauai District Land Agent

SUBJECT: Request for Transfer of Parcel 39, TMK: (4) 4-1-03 to the Department of Transportation, Highway Division for Kuhio Highway Road Widening Purposes

LOCATION: Wallua, Kauai, TMK: (4) 4-1-03: 39

APPLICANT: Department of Transportation, Highway Division

Transmitted for your review and comment is a copy of the above referenced request involving State lands. We would appreciate your comments on this application. Please submit any comments by September 16, 2005. If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact me at 274-3491. Thank you.

Attachments

- ☒ We have no objections.
☐ We have no comments.
☐ Comments are attached

Signed: _____

Date: 9/13/05

cc: Central Files
District Files

EXHIBIT B

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BLVD., ROOM 555
KAPOLEI, HAWAII 96707

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MARUDA
DEPUTY DIRECTOR - LAND

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ACTING DEPUTY DIRECTOR - WATER


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COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOHOLA LAND AND RESERVE COMMISSION
LAND
STATE PARKS

September 7, 2005

MEMORANDUM

LOG NO: 2005.1910
DOC NO: 0509NM02

TO: Thomas Oi, Kauai District Land Agent
DLNR- Kauai Land Division

FROM: Melanie Chinen, Administrator 
State Historic Preservation Division

SUBJECT: Chapter 6E-8 Historic Preservation Review – Request for Transfer of
Parcel 39 to Department of Transportation, Highways Division for
Kuhio Highway Road Widening
Wailua, Kauai
TMK: 4-4-1-03: 39

Thank you for the opportunity to comment on this application we received on August 31, 2005. No archaeological inventory surveys has been conducted for the above referenced land parcel. We believe significant historic sites including habitation, temporary habitation, and human burials may exist in the area. In order to ensure any historic sites in this project area are documented we are requesting that an archaeological inventory survey be completed and submitted to our office for review and approval.

In this situation, we recommend that any approved application contain the following conditions:

- 1) An archaeologist inventory survey shall be conducted by a qualified archaeologist prior to any land altering activities. A report documenting the archaeological work shall be submitted to the State Historic Preservation Division for review and approval. The report shall include a proposed evaluation of significance of any historic sites that are found, and mitigation proposals for any significant sites that are present. These proposals must be reviewed and approved by the Division.
- 2) If significant historic sites are present (non-burial sites), then detailed mitigation plans (scopes of work) must be submitted to the State Historic Preservation Division for approval. The State Historic Preservation Division must verify in writing that the plan(s) have been successfully executed prior to any land alteration.
- 3) If burials are discovered during the survey, burial treatment determinations for native Hawaiian burials must be handled by the Kauai Island Burial Council. A burial treatment plan shall be prepared for burials, following the procedures outlined in Chapter 6E-43 and that section's accompanying rules. This plan must be executed successfully, prior to any land alteration.

If you have any questions, please call Nancy McMahon at 742-7033.

NM:jen

EXHIBIT C